

Appl. No. 10/699,469
Atty. Docket No. 9081M
Amdt. dated 03/01/2005
Reply to Office Action of 09/28/2004
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 40 are pending in the present application.

Claims 1 and 2 have been amended. Support for the amendments are found at page 5, lines 2-5 of the specification and Examples 1-9 found at pages 24-27.

In addition, new Claims 22-40 have been added. Support for these amendments are in the claims as filed, at page 5, lines 2-5 of the specification and Examples 1-9 found at pages 24-27.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Double Patenting Rejection

Claims 1-21 have been provisionally rejected for obviousness-type double patenting over Claims 1-23 and 1-22 of the commonly assigned, copending application U.S. Serial No. 10/837,201 and U.S. Serial No. 10/836,984, respectively. An appropriate terminal disclaimer is submitted herewith this response. Therefore, the rejection is obviated.

Rejection Under 35 USC §102 Over Rattinger et al. 5,965,501 or Rattinger et al. 6,174,845

Claims 1-21 are rejected under 35 USC § 102(b) as being anticipated by Rattinger et al. '501' or Rattinger et al. '845'. The Examiner states that Rattinger et al. '501' or Rattinger et al. '845' disclose a personal washing bar composition comprising an emollient rich phase or stripe. Applicants respectfully traverse this rejection based on the amendment and remarks contained herein.

Neither Rattinger et al. '501' nor Rattinger et al. '845' teach or suggest a striped personal care composition in a form selected from the group consisting of liquid, semi-liquid, cream, lotion, gel, and mixtures thereof. Instead, Rattinger et al. '501' and Rattinger et al. '845' relates to a "novel soap bar composition", See column 3, lines 21-22 and column 3, lines 24-25, respectively. Under § 102, anticipation requires that all the claim elements appear in a single prior art document. "A claim is anticipated only if each

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and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989). Since Rattinger et al. '501' and Rattinger et al. '845' do not disclose each and every element of the present application, they cannot as a matter of law anticipate the present application.

Reconsideration and withdrawal of the rejection on this basis are requested.

Rejection Under 35 USC §103(a) Over Rattinger et al. 5,965,501 or Rattinger et al. 6,174,845

Claims 1-21 have been rejected under 35 USC §103(a) as being unpatentable over Rattinger et al. '501' or Rattinger et al. '845'. The Examiner states that both Rattinger et al. '501' and Rattinger et al. '845' disclose a personal washing bar composition comprising an emollient rich phase or stripe. Applicants respectfully traverse this rejection based on the amendment and remarks contained herein.

Neither Rattinger et al. '501' nor Rattinger et al. '845' teach or suggest all of the claim limitations of Claims 1-21 and, therefore, does not establish a *prima facie* case of obviousness. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP § 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Specifically, neither Rattinger et al. '501' nor Rattinger et al. '845' teach a striped personal care composition in a form selected from the group consisting of liquid, semi-liquid, cream, lotion, gel, and mixtures thereof as claimed and disclosed in the present invention. Instead, Rattinger et al. '501' and Rattinger et al. '845' relates to a "soap bar composition", See column 3, lines 21-22 and column 3, lines 24-25, respectively.

There is nothing in either reference alone or in combination that would lead one of skill the art to a striped personal cleansing composition comprising: (a) a first stripe comprising a cleansing phase comprising a surfactant, water and optionally additional

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conventional personal cleansing ingredients; and (b) at least one additional stripe comprising a benefit phase comprising at least about 20% by weight of a hydrophobic material having a solubility parameter of from about 5 to about 15; and wherein the cleansing phase and the benefit phase have substantially the same density; and wherein said striped personal care composition is in a form selected from the group consisting of liquid, semi-liquid, cream, lotion, gel, and mixtures thereof. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. MPEP § 2143.03 citing *In re Fine*, 837 F.2d 1071, USPQ2d 1596 (Fed. Cir. 1988).

Accordingly, Claims 1-40 are novel and nonobvious over Rattinger et al. 5,965,501 or Rattinger et al. 6,174,845 references.

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Conclusion

In light of the remarks and amendments presented herein, Applicants respectfully submit Claims 1-40 are allowable over the cited references. Reconsideration and allowance are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicants' undersigned attorney for further discussion.

Respectfully Submitted,

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